

FILED

SEP 28 2005

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) No. 04-28488-A-7
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PATRICIA DI NATALE)
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Debtor.)
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MEMORANDUM DECISION

The debtor has filed an ex parte motion to reopen her chapter 7 case for the purpose of amending her schedules to list previously omitted unsecured creditors to Schedule F.

The petition was filed on August 19, 2004. The notice of the meeting of creditors informed the creditors whether this was a "no-asset" case. Accordingly, creditors were instructed to not file proofs of claim.

Thus, this case was a "no-asset, no-bar-date-case." Creditors holding claims otherwise dischargeable by the debtor had their claims discharged even though their claims were not scheduled and even though the omitted creditors had no notice of the case. 11 U.S.C. § 727(b); Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433 (9th Cir. 1993). It is not

1 necessary to reopen the case and amend the schedules in order to
2 discharge the claims of the omitted creditors.

3 If the omitted creditors' claims could have been excepted
4 from discharge by 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6), the
5 debtor's failure to schedule the claims when the petition was
6 filed meant that the omitted creditors did not receive notice of
7 the deadline for filing a complaint. See 11 U.S.C. § 523(c);
8 Fed. R. Bankr. P. 4007(b). Therefore, unless the omitted
9 creditors had actual knowledge that the petition had been filed
10 in time to file a timely dischargeability complaint, the failure
11 to initially schedule the claims may mean one or more of the
12 claims is nondischargeable. 11 U.S.C. § 523(a)(3)(B). Amending
13 the schedules will not change this result.

14 In short, reopening the case to permit the amendment of the
15 schedules will have no effect whatever. The debtor does not need
16 to do anything -- the claims of the omitted creditors were
17 discharged in a chapter 7 bankruptcy case provided that omitted
18 creditors cannot state a claim under section 523(a)(3)(B). To do
19 so, requires that the filing of an adversary proceeding. See In
20 re Costa, 172 B.R. 954 (Bankr. E.D. Cal. 1994). In connection
21 with the resolution of that adversary proceeding, there must be
22 two determinations. Did the omitted creditors have actual notice
23 of the bankruptcy filing in sufficient time to file a timely
24 dischargeability complaint? See Fed.R.Bankr.P. 4007(c). And, if
25 there was no actual notice of the petition, are any of the claims
26 nondischargeable under 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6)?¹

27
28 ¹ If the omitted creditor is claiming the debts are non-
dischargeable under 11 U.S.C. § 523(a)(1), (5), (7)-(15), (16),

1 If an omitted creditor had actual notice or if its claim is not
2 excepted from discharge by 11 U.S.C. § 523(a)(2), (a)(4), or
3 (a)(6), the court will declare the omitted claims discharged in
4 bankruptcy.

5 Therefore, while the court will permit this case to be
6 reopened, the court cannot issue an unequivocal declaration that
7 the omitted claims were discharged in bankruptcy. Because this
8 was a "no-asset, no bar date" case, the unscheduled claims of the
9 omitted creditors were discharged unless those claims are
10 nondischargeable under section 523(a)(3)(B). To obtain a
11 declaration that an omitted claim is not made nondischargeable by
12 section 523(a)(3)(B), the debtor (or the omitted creditor) must
13 file, serve, and prevail in an adversary proceeding.

14 Dated: *28 Sept 2005*

15 By the Court

16 

17 Michael S. McManus, Chief Judge
18 United States Bankruptcy Court
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25 (17), the creditors cannot be prejudiced by the omission of their
26 claim in a "no asset" case. Unlike section 523(a)(2), (4) or (6),
27 there is no deadline for the filing of such dischargeability
28 complaints and nonbankruptcy courts may determine whether the
debts fall into the exceptions enumerated in section 523(a)(1),
(5), (7)-(15), (16), (17). 11 U.S.C. § 523(c)(1); Fed.R.Bankr.P.
4007(c).

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

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Dated: 9/24/05

DiNatale
Deputy Clerk